

**Draft Proposed Stormwater Regulations for Part I, II, and III**  
August 22, 2008

**CHAPTER 60**  
**VIRGINIA STORMWATER MANAGEMENT PROGRAM**  
**(VSMP) PERMIT REGULATIONS**

**Part I**

**4VAC50-60-10. Definitions.**

The following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise.

"Act" means the Virginia Stormwater Management Act, Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Adequate channel" means a ~~channel~~ watercourse or wetland that will convey the designated frequency storm event without overtopping ~~the channel bank nor its banks~~ or causing erosive damage to the ~~channel bed, or banks or overbank sections of the same.~~

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC §1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Virginia Soil and Water Conservation Board or their designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

~~"Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.~~

~~"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. Note that a locality may opt to calculate actual watershed specific values for the average land cover condition based upon 4VAC50-60-110.~~

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practice ~~(BMP)~~ or "BMP" means schedules of activities, prohibitions of practices, including both a structural or nonstructural practice, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. BMPs also include treatment

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requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

~~"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in-situ material.~~

~~"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.~~

"Board" means the Virginia Soil and Water Conservation Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural stream or manmade waterway watercourse with defined bed and banks that conducts continuously or periodically flowing water.

~~"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.~~

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations, that specifies how the water quality and quantity components of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

"Construction activity" means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control measure" means any ~~best management practice~~ BMP or other method used to prevent or reduce the discharge of pollutants to surface state waters.

"Co-operator" means an operator ~~to~~ of a VSMP permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"CWA and regulations" means the federal Clean Water Act (CWA) and applicable regulations promulgated thereunder that are published in the Code of Federal Regulations (CFR) promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

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"Department" means the Department of Conservation and Recreation.

"Development" means ~~a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units~~ land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the board, for the reporting of self-monitoring results by operators.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Drainage area" means a land and water area on a land disturbing site from which runoff flows to a common outlet point.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under §304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency (~~EPA~~)" or "EPA" means the United States Environmental Protection Agency.

"Event mean concentration" or "EMC" means the total mass load of a pollutant parameter divided by the total runoff water volume discharged during an individual storm event.

"Existing permit" means for the purposes of this chapter a permit issued by the permit-issuing authority and currently held by a permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to

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construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VSMP point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP program.

"Flood fringe" is the portion of the floodplain outside of the floodway, usually associated with standing rather than flowing water, which is covered by floodwater during the 100-year discharge.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means any land area susceptible to being inundated by water from any source. It includes the floodway and flood-fringe areas.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot or as otherwise designated by the Federal Emergency Management Agency.

"General permit" means a VSMP permit authorizing a category of discharges under the CWA and the Act within a geographical area.

~~"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.~~

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2000) pursuant to §311 of the CWA.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6<sup>th</sup> Order National Watershed Boundary Dataset.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any conventional concrete, asphalt, or ~~compacted~~ gravel surface that is or may become compacted.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)".

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"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

"Inspection" means an on-site review of the project's compliance with the permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the ~~federal Clean Water Act~~ CWA, the Act, and this chapter.

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:
  - a. Physical interconnections between the municipal separate storm sewers;
  - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
  - c. The quantity and nature of pollutants discharged to surface waters;
  - d. The nature of the receiving waters; and
  - e. Other relevant factors.
4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a

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stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; ~~and (iii) highway construction projects; and (iv)~~ construction of stormwater channels and stream restoration activities. Private subdivision roads or streets shall not be considered linear development projects.

"Local stormwater management program" or "local program" means ~~a statement of the various methods employed by a locality or the department to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, plan review, inspection, enforcement, and evaluation consistent with the Act and this chapter. The ordinance shall include provisions to require the control of after development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures.~~

"Locality" means a county, city, or town.

"Low Impact Development" or "LID" means a design strategy with the goal of maintaining or replicating the pre-development hydrologic regime through the use of design techniques to create a functionally equivalent hydrologic site design. Hydrologic functions of storage, infiltration and ground water recharge, as well as the volume and frequency of discharges are maintained through the use of integrated and distributed micro-scale stormwater retention and detention areas, reduction of impervious surfaces, and the lengthening of runoff flow paths and flow time. Other strategies include the preservation/protection of environmentally sensitive site features such as riparian buffers, wetlands, steep slopes, valuable (mature) trees, flood plains, woodlands, and highly permeable soils.

"Major facility" means any VSMP facility or activity classified as such by the regional administrator in conjunction with the board.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

~~"Manmade"~~ "Man-made" means constructed by man.

"Man-made stormwater conveyance system" means a pipe, ditch, vegetated swale, or other conveyance constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA §402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management

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practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving waters; or
- e. Other relevant factors.

4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration as specified in 4VAC50-60-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for

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erosion and sediment control and stormwater management, or a designated and approved management agency under §208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the ~~Virginia Stormwater Management~~ Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA.

"National Pollutant Discharge Elimination System (~~NPDES~~)" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§307, 402, 318, and 405 of the CWA. The term includes an approved program.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

"Natural stormwater conveyance system" means the main channel of a natural stream, in combination with the floodway and flood fringe, which compose the floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which is not a new source; and

4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil



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and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a permit issued by the permit-issuing authority to a permit applicant that does not currently hold and has never held a permit of that type, for that activity, at that location.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under §306 of the CWA that are applicable to such source; or

2. After proposal of standards of performance in accordance with §306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with §306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

~~"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.~~

"Operator" means the owner or operator of any facility or activity subject to regulation under the VSMP ~~program~~. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of §62.1-44.5 of the Code of Virginia, the Act and this chapter.

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"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" means an approval issued by the permit-issuing authority for the initiation of a land-disturbing activity or for stormwater discharges from an MS4. Permit does not include any permit that has not yet been the subject of final permit-issuing authority action, such as a draft permit or a proposed permit.

"Permit-issuing authority" means the board, the department, or a locality with a qualifying local program ~~that is delegated authority authorized by the board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Act and this chapter.~~

"Permittee" means the person or locality to which the permit is issued, including any operator whose construction site is covered under a construction general permit.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body (including but not limited to a federal, state, or local entity), any interstate body or any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Point of discharge" means a location at which stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC §2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered in a diffuse manner by stormwater runoff.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to

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state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Pre-development" refers to the conditions that exist at the time that plans for the land development of a tract of land are ~~approved by~~ submitted to the plan approval authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being ~~approved~~ submitted or permitted shall establish pre-development conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land disturbing activity.

"Privately owned treatment works (~~PVOTW~~)" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Proposed permit" means a VSMP permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works (~~POTW~~)" or "POTW" means a treatment works as defined by §212 of the CWA that is owned by a state or municipality (as defined by §502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in §502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualified personnel" means a person that holds a certificate of competency from the board as a responsible land disturber, inspector, or combined administrator.

"Qualifying local stormwater management program" or "qualifying local program" means a local program that is administered by a locality that has been authorized by the board to issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities (4 VAC 50-60-1170).

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

~~"Regional (watershed-wide) stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a specific watershed, although only portions of the watershed may experience land development.~~

~~"Regional (watershed-wide) stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.~~

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505 "Restored stormwater conveyance system" means a stormwater conveyance system that  
506 has been designed and constructed using natural channel design concepts, including the main  
507 channel, floodway, and flood fringe.

508 "Revoked permit" means, for the purposes of this chapter, an existing permit that is  
509 terminated by the board before its expiration.

510 "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance  
511 as runoff.

512 "Runoff" or "stormwater runoff" means that portion of precipitation that is discharged  
513 across the land surface or through conveyances to one or more waterways.

514 "Runoff characteristics" include, but are not limited to velocity, peak flow rate, volume,  
515 time of concentration, and flow duration, and their influence on channel morphology including  
516 sinuosity, channel cross-sectional area, and channel slope.

517 "Runoff volume" means the volume of water that runs off the land development project  
518 from a prescribed design storm.

519 ~~"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The~~  
520 ~~runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or~~  
521 ~~infiltrated into the in-situ soils.~~

522 "Schedule of compliance" means a schedule of remedial measures included in a permit,  
523 including an enforceable sequence of interim requirements (for example, actions, operations, or  
524 milestone events) leading to compliance with the Act, the CWA and regulations.

525 "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

526 "Severe property damage" means substantial physical damage to property, damage to the  
527 treatment facilities that causes them to become inoperable, or substantial and permanent loss of  
528 natural resources that can reasonably be expected to occur in the absence of a bypass. Severe  
529 property damage does not mean economic loss caused by delays in production.

530 ~~"Shallow marsh" means a zone within a stormwater extended detention basin that exists~~  
531 ~~from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area~~  
532 ~~and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage~~  
533 ~~area, to maintain the desired water surface elevations to support emergent vegetation.~~

534 "Significant materials" means, but is not limited to: raw materials; fuels; materials such  
535 as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw  
536 materials used in food processing or production; hazardous substances designated under  
537 §101(14) of CERCLA (42 USC §9601(14)); any chemical the facility is required to report  
538 pursuant to §313 of Title III of SARA (42 USC §11023); fertilizers; pesticides; and waste  
539 products such as ashes, slag and sludge that have the potential to be released with stormwater  
540 discharges.

541 "Single jurisdiction" means, for the purposes of this chapter, a single county or city. The  
542 term county includes incorporated towns which are part of the county.

543 "Site" means the land or water area where any facility or activity is physically located or  
544 conducted, a parcel of land being developed, or a designated area of a parcel in which the land  
545 development project is located.

546 "Site hydrology" means the movement of water on and off the site as determined by  
547 parameters including, but not limited to, soil types, soil permeability, vegetative cover, seasonal  
548 water tables, slopes, land cover, and impervious cover.

549 "Small construction activity" means:

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1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Stable" means, in the context of channels, a channel that has developed an established dimension, pattern and profile such that over time, these features are maintained and the channel neither aggrades nor degrades.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state that coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Act.

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"State project" means any land development project that is undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning.

"State Water Control Law" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater conveyance system" means any of the following, either within or downstream of the land disturbing activity: (1) a man-made stormwater conveyance system; (2) a natural stormwater conveyance system; or (3) a restored stormwater conveyance system.

~~"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

"Stormwater discharge associated with construction activity" means a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

~~"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

~~"Stormwater extended detention basin enhanced" or "extended detention basin enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.~~

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document(s) containing material for describing how existing runoff characteristics will be maintained by a land-disturbing activity and methods for complying with the requirements of the local program or this chapter.

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"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of the ~~Virginia Stormwater Management~~ Act, this chapter and associated guidance documents.

"Stormwater management standards" means the minimum criteria for stormwater management programs and land-disturbing activities as set out in Part II of these regulations.

"Stormwater Pollution Prevention Plan" (~~SWPPP~~) or "plan SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of ~~pollution~~ pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall describe and ensure the implementation of ~~best management practices~~ control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment control plan, a post-construction stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to reduce pollutants in stormwater discharges from land-disturbing activities and to assure compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued or general permit coverage authorized.

~~"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.~~

~~"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.~~

~~"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.~~

~~"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.~~

"Subdivision" means the same as defined in §15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. That are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as surface waters under this definition;

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5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;  
6. The territorial sea; and  
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Toxic pollutant" means any pollutant listed as toxic under §307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing §405(d) of the CWA.

"Unstable" means, in the context of channels, a channel that is not stable.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under §301 or §316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on §301(c), §301(g), §301(h), §301(i), or §316(a) of the CWA.

~~"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.~~

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Act" or "Act" means Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed design standards and specifications for BMPs that may be used in Virginia to comply with requirements of the Act and associated regulations and that is jointly created by the



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department and the Virginia Water Resources Research Center subject to advice from a permanent stakeholder advisory committee.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Virginia Stormwater Management Program (~~VSMP~~)" or "VSMP" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the ~~federal Clean Water Act CWA~~, the ~~Virginia Stormwater Management Act~~, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program (~~VSMP~~) permit" or "VSMP permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

"VSMP application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VSMP permit.

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia), the ~~Virginia Stormwater Management Act~~ (§10.1-603.1 et seq. of the Code of Virginia), and the ~~CWA federal Clean Water Act~~ (33 USC §1251 et seq.).

~~"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.~~

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

### **4VAC50-60-20. Purposes.**

The purposes of this chapter are to provide a framework for the administration, implementation and enforcement of the Virginia Stormwater Management Act (Act) and to delineate the procedures and requirements to be followed in connection with VSMP permits

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issued by the board or its designee pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management Act, while at the same time providing flexibility for innovative solutions to stormwater management issues. The chapter also establishes the board's procedures for the authorization of a qualifying local program, board and department oversight authorities for an authorized qualifying local program, the board's procedures for utilization by the department in administering a local program in localities where no qualifying local program is authorized, and the components of a stormwater management program including but not limited to stormwater management standards.

### **4VAC50-60-30. Applicability.**

This chapter is applicable to:

1. Every private, local, state, or federal entity that establishes a stormwater management program or a MS4 Program;

2. The department in its oversight of locally administered programs or in its administration of a local program;

~~2.~~ 3. Every state agency project regulated under the Act and this chapter; and

~~3.~~ 4. Every land-disturbing activity regulated under § 10.1-603.8 of the Code of Virginia unless otherwise exempted in 10.1-603.8 subsection B.

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**Part II Stormwater Management Program Technical Criteria**

**4VAC50-60-40. Authority and applicability.**

~~This part specifies technical criteria for every stormwater management program and land-disturbing activity.~~

Pursuant to the Virginia Stormwater Management Act, § 10.1-603.2 et seq. of the Code of Virginia, the board is required to take actions ensuring the general health, safety and welfare of the citizens of the Commonwealth as well as protecting the quality and quantity of state waters from the potential harm of unmanaged stormwater. In addition to other authority granted to the board under the Stormwater Management Act, the board is authorized pursuant to §§ 10.1-603.2:1 and 10.1-603.4 to adopt regulations that specify minimum technical criteria for stormwater management programs in Virginia, to establish statewide standards for stormwater management from land disturbing activities, and to protect properties, the quality and quantity of state waters, the physical integrity of stream channels, and other natural resources.

In accordance with the board's authority, this part establishes the minimum technical criteria and stormwater management standards that shall be employed by a ~~local or state administered stormwater management program or~~ state agency in accordance with an implementation schedule set by the board, or by a qualifying local program or department administered local stormwater management program that has been approved by the board, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land disturbing activities.

**4VAC50-60-50. General. Repeal**

**4VAC50-60-53. General Objectives**

The physical, chemical, biological and hydrologic characteristics and the water quality and quantity of the receiving state waters shall be maintained, protected, or improved in accordance with the requirements of this part. Objectives include, but are not limited to, supporting state designated uses and water quality standards. All control measures used shall be employed in a manner which minimizes impacts on receiving state waters.

**4VAC50-60-56. Applicability of other laws and regulations**

Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Law and the Chesapeake Bay Preservation Act except as provided in § 10.1-603.3 subsection I and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

**4VAC50-60-60. Water quality. Repeal**

**4VAC50-60-63. Water Quality Criteria Requirements**

A. In order to protect the quality of state waters and to control nonpoint source pollution, the following minimum technical criteria and statewide standards for stormwater management shall be applied to the site of a land disturbing activity. The local program shall have discretion

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to allow for application of the criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC, unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-96.

1. New development. The total phosphorus load of new development projects shall not exceed 0.28 pounds per acre per year.

2. Development on prior developed lands.

a. The total phosphorus load of projects occurring on prior developed lands that result in an impervious cover of a site being less than or equal to 40% shall not exceed 0.28 pounds per acre per year.

b. The total phosphorus load of projects occurring on prior developed lands that result in an impervious cover of a site being greater than 40% shall be reduced to an amount at least 20% below the pre-development total phosphorus load. However, the total phosphorus load shall not be required to be reduced to below 0.28 pounds per acre per year unless a more stringent standard has been established by a qualifying local program.

3. Compliance with the requirements of subdivisions A1 and A2 shall be determined in accordance with 4VAC50-60-65.

4. TMDL. In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL by the Commonwealth and approved by the EPA that would apply and is assigned to stormwater discharges from a land disturbing activity, necessary control measures must be implemented during the land disturbing activity by the operator to meet the WLA in accordance with the requirements established in the General Permit for Discharges of Stormwater from Construction Activities or an individual permit, which address both construction and post-construction discharges.

### 4VAC50-60-65. Water Quality Compliance

A. Compliance with the water quality criteria set out in 4VAC 50-60-63 subdivisions A1 and A2 shall be determined by utilizing the Pollutant - Runoff Reduction Method contained within the Virginia Stormwater Management Handbook or another methodology that is demonstrated by the qualifying local program to achieve equivalent results and is approved by the local program and the board.

B. The BMPs listed in Table 1 or the BMPs available on the Virginia Stormwater BMP Clearinghouse website shall be utilized as necessary to effectively reduce the phosphorus load in accordance with the Pollutant-Runoff Reduction Method. The Pollutant-Runoff Reduction Method may additionally provide estimated reductions for other pollutants, such as nitrogen, for informational purposes.

Table 1  
BMP Pollutant Removal Efficiencies

Practice	Removal of Total Phosphorus Removal by Runoff Volume Reduction (RR, as %) (based upon 1	Removal of Total Phosphorus Removal by Treatment -- Pollutant Concentration Reduction	Total Removal of Total Phosphorus Removal (TR, as %)

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	<u>inch of rainfall -- 90% storm)</u>	<u>(PR, as %)</u>	
<u>Green Roof 1</u>	<u>45</u>	<u>0</u>	<u>45</u>
<u>Green Roof 2</u>	<u>60</u>	<u>0</u>	<u>60</u>
<u>Rooftop Disconnection 1</u>	<u>25</u>	<u>0</u>	<u>25</u>
<u>Rooftop Disconnection 2</u>	<u>50</u>	<u>0</u>	<u>50</u>
<u>Rain Tanks/Cisterns 1</u>	<u>actual volume x</u> <u>.75</u>	<u>0</u>	<u>40-actual volume</u> <u>x .75</u>
<u>Soil Amendments 1</u>	<u>50</u>	<u>0</u>	<u>50</u>
<u>Soil Amendments 2</u>	<u>75</u>	<u>0</u>	<u>75</u>
<u>Permeable Pavement 1</u>	<u>45</u>	<u>25</u>	<u>59</u>
<u>Permeable Pavement 2</u>	<u>75</u>	<u>25</u>	<u>81</u>
<u>Grass Channel 1</u>	<u>10</u>	<u>15</u>	<u>23</u>
<u>Grass Channel 2</u>	<u>20</u>	<u>15</u>	<u>32</u>
<u>Bioretention 1</u>	<u>40</u>	<u>25</u>	<u>55</u>
<u>Bioretention 2</u>	<u>80</u>	<u>50</u>	<u>90</u>
<u>Infiltration 1</u>	<u>50</u>	<u>25</u>	<u>63</u>
<u>Infiltration 2</u>	<u>90</u>	<u>25</u>	<u>93</u>
<u>Dry Swale 1</u>	<u>40</u>	<u>20</u>	<u>52</u>
<u>Dry Swale 2</u>	<u>60</u>	<u>40</u>	<u>76</u>
<u>Wet Swale 1</u>	<u>0</u>	<u>20</u>	<u>20</u>
<u>Wet Swale 2</u>	<u>0</u>	<u>40</u>	<u>40</u>
<u>Sheet Flow to Conserved Open Space 1</u>	<u>0</u>	<u>50</u>	<u>50</u>
<u>Sheet Flow to Conserved Open Space 2</u>	<u>0</u>	<u>75</u>	<u>75</u>
<u>Extended Detention Pond 1</u>	<u>0</u>	<u>15</u>	<u>15</u>
<u>Extended Detention Pond 2</u>	<u>15</u>	<u>15</u>	<u>28</u>
<u>Filtering Practice 1</u>	<u>0</u>	<u>60</u>	<u>60</u>
<u>Filtering Practice 2</u>	<u>0</u>	<u>65</u>	<u>65</u>
<u>Constructed Wetland 1</u>	<u>0</u>	<u>50</u>	<u>50</u>
<u>Constructed Wetland 2</u>	<u>0</u>	<u>75</u>	<u>75</u>
<u>Wet Pond 1</u>	<u>0</u>	<u>50</u>	<u>50</u>
<u>Wet Pond 2</u>	<u>0</u>	<u>75</u>	<u>75</u>

C. BMPs differing from those listed in Table 1 shall be reviewed and approved in accordance with procedures established by the BMP Clearinghouse Committee and have been set out in board approved guidance.

D. A qualifying local program may ~~disallow~~ establish use limitations on specific BMPs with board approval following the submission of the proposed use limitation and written justification to the department.

E. Where the land disturbing activity only occurs on a portion of the site, the local program may review the stormwater management plan based upon the portion of the site that is proposed to be developed, provided that the local program has established guidance for such a review. Such portion shall be deemed to include any area left undeveloped pursuant to any local

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requirement or proffer accepted by a locality. Any such guidance shall be provided to the department.

F. If a comprehensive watershed stormwater management plan has been adopted pursuant to 4VAC50-60-96 for the watershed within which a project is located, then the qualifying local program may allow off-site controls in accordance with the plan to achieve the post-development pollutant load water quality technical criteria set out in 4VAC-60-63 subdivisions A1 and A2. Such off-site controls shall achieve the required pollutant reductions either completely off-site in accordance with the plan or in a combination of on-site and off-site controls.

G. Where no plan exists pursuant to subsection F, off-site controls may be used to meet the post-development pollutant load water quality technical criteria set out in 4VAC50-60-63 subdivisions A1 and A2 provided:

1. The local program allows for off-site controls;
2. The applicant demonstrates to the satisfaction of the local program that off-site reductions equal to or greater than those that would otherwise be required for the site are achieved;
3. The applicant demonstrates to the satisfaction of the local program that the development's runoff and the runoff from any off-site treatment area shall be controlled in accordance with 4VAC50-60-66;
4. Off-site controls must be located within the same HUC or the adjacent downstream HUC to the land disturbing site; and
5. The applicant demonstrates to the satisfaction of the local program that the right to utilize the off-site control area and any necessary easements have been obtained and maintenance agreements for the stormwater management facilities have been established pursuant to 4VAC50-60-108.

H. Alternatively, the local program may choose to implement the provisions of 4VAC50-60-63 subdivisions A1 and A2 through waive the requirements of subdivisions A1 and A2 of 4VAC50-60-63 through the granting of an exception granted pursuant to, pursuant to 4VAC50-60-122 in order to implement off-site treatment.

#### **4VAC 50-60-66 Water Quantity**

Channel protection and flood protection shall be managed addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of §10.1-603.4(7).

A. Channel protection. Concentrated stormwater flow shall be discharged into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Discharges to man-made stormwater conveyance systems. The point of discharge releases stormwater into a man-made stormwater conveyance system that, following the land disturbing activity, conveys the post-development peak flow rate from the 2-year 24-hour storm without causing erosion of the system. The applicant must demonstrate, using accepted hydrologic and hydraulic design methodologies, that the runoff following the land disturbing activity, in combination with other existing stormwater runoff, consistent with applicable channel design criteria, does not exceed this requirement.

2. Discharges to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate using accepted

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hydrologic and hydraulic design methodologies, that the runoff following the land disturbing activity, in combination with other existing stormwater runoff, will not exceed the design of the restored stormwater conveyance system nor result in instability of the system.

3. Discharges to stable natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that is stable and, following the land disturbing activity, (i) will not become unstable as a result of the discharge from the one-year 24 hour storm, and (ii) provides a peak flow rate from the one-year 24 hour storm calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent results and is approved by the board:

$Q_{\text{Developed}} * RV_{\text{Developed}} \leq Q_{\text{Pre-Developed}} * RV_{\text{Pre-Developed}}$ , where

$Q_{\text{Developed}} =$  The allowable peak flow rate of runoff from the developed site

$Q_{\text{Pre-Developed}} =$  The peak flow rate of runoff from the site in the pre-developed condition

$RV_{\text{Pre-Developed}} =$  The volume of runoff from the site in the pre-developed condition

$RV_{\text{Developed}} =$  The volume of runoff from the site in the developed site

4. Discharges to unstable natural stormwater conveyance systems. Where the point of discharge releases stormwater into a natural stormwater conveyance system that is unstable, stormwater runoff following a land disturbing activity shall be released from each point of discharge into a channel at or below a peak flow rate ( $Q_{\text{Developed}}$ ) based on the one year 24-hour storm, calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent results and is approved by the board:

$Q_{\text{Developed}} * RV_{\text{Developed}} \leq Q_{\text{Forested}} * RV_{\text{Forested}}$ , where

$Q_{\text{Developed}} =$  The allowable peak flow rate from the developed site

$Q_{\text{Forested}} =$  The peak flow rate from the site in a forested condition

$RV_{\text{Forested}} =$  The volume of runoff from the site in a forested condition

$RV_{\text{Developed}} =$  The volume of runoff from the developed site

B. Flood protection. Concentrated stormwater flow shall be discharged into a stormwater conveyance system and shall meet one of the following criteria, as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Discharges to man-made stormwater conveyance systems. The point of discharge releases stormwater into a man-made stormwater conveyance system that, following the land disturbing activity, confines the post-development peak flow rate from the 10-year 24-hour storm



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within the man-made stormwater conveyance system. The applicant must demonstrate, using accepted hydrologic and hydraulic design methodologies, that the runoff following the land disturbing activity, in combination with other existing stormwater runoff, consistent with applicable channel design criteria, does not exceed this requirement.

2. Discharges to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate, using accepted hydrologic and hydraulic design methodologies, that the peak flow rate from the 10-year 24-hour storm following the land disturbing activity will be confined within the system.

3. Discharges to natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that currently does not flood during the 10-year 24-hour storm and, following the land disturbing activity, confines the post-development peak flow rate from the 10-year 24-hour storm within the system.

4. Discharges to natural stormwater conveyance systems where localized flooding exists during the 10-year 24-hour storm. The point of discharge releases a post-development peak flow rate for the 10-year 24-hour storm from the point of discharge that shall not exceed the pre-development peak flow rate from the 10-year 24-hour storm based on forested conditions.

5. A local program may adopt alternate flood protection design criteria that (i) achieves equivalent results, (ii) is based upon geographic, land use, topographic, geologic or other downstream conveyance factors, and (iii) is approved by the board.

C. One percent rule. If either of the following criteria is met, subsections A and B do not apply:

1. Based on area. Prior to any land disturbance, the site's contributing drainage area to a point of discharge from the site is less than or equal to one (1) percent of the total watershed area draining to that point of discharge; or

2. Based on discharge. Based on the post-development land cover conditions prior to the implementation of any stormwater quantity control measures, the development of the site results in an increase in the peak flow rate from the one-year 24-hour storm that is less than one (1) percent of the existing peak flow rate from the one-year 24-hour storm generated by the total watershed area draining to that point of discharge.

### D. Extreme Flood Protection.

1. The land disturbing activity shall provide protection from extreme flood damage using one of the following methods:

a. The FEMA-designated 100-year floodplain is reserved from development by the local government through a local floodplain ordinance; the land disturbing activity does not result in structures not authorized by the floodplain ordinance being added within the floodplain; and an acceptable method of downstream analysis indicates that downstream roads, bridges, public utilities and other infrastructure can safely pass the 100-year 24-hour storm following development; or

b. The post-development peak flow rate from the 100-year 24-hour storm shall not exceed the pre-development peak flow rate of the 100-year 24-hour storm.

2. A local program may consider waiving the extreme flood protection requirements when any of the following conditions is met at the land disturbing site:

a. The point of discharge is directly to a large reservoir, lake, or tidal estuary; or

b. The point of discharge is directly to a 4<sup>th</sup>-order or larger stream or river; or

c. The land disturbing activity is less than one acre in size; or



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d. The land disturbing activity is a redevelopment or infill project; or  
e. The site of the land disturbing activity has been the subject of a floodplain study, the results of which indicate that control of the 100-year storm is not needed to protect downstream property and structures.

D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation or flooding of down gradient properties or resources shall be diverted to a detention facility or a stormwater conveyance system that conveys the runoff without causing down gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

E. For purposes of computing predevelopment runoff from prior developed sites, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with NRCS standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the local program authority that actual site conditions warrant such considerations.

F. Pre-development runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices in accordance with guidance provided in the Virginia Stormwater Management Handbook and by the qualifying local program.

G. Except where the compliance options under subdivisions A 4 and B 4 of this section are utilized, flooding and channel erosion impacts to stormwater conveyance systems shall be analyzed for each point of discharge (i) to a point that is at least 150 feet downstream of a point where the stormwater conveyance system is joined by another that has a drainage area that is at least 90% of the size of the first drainage area at the point of confluence, (ii) to a point that is at least 150 feet downstream of a point where the drainage area is 360 acres or greater, or (iii) for areas with surface slopes exceeding 30%, to a point that is 500 feet downstream from the point of discharge, in accordance with channel analysis guidance provided in Technical Bulletin # 1, Stream Channel Erosion Control, or in accordance with more stringent channel analysis guidance established by the qualifying local program and provided to the department. Such analysis shall include estimates of runoff from the developed site and the entire upstream watershed which contributes to that point of discharge. Good engineering practices and calculations in accordance with DCR guidance shall be used to evaluate post development runoff characteristics and site hydrology, and flooding and channel erosion impacts.

If the downstream owner or owners refuse to give permission to access the property for the collection of data, evidence of this refusal shall be given and arrangements made satisfactory to the local program to provide an alternative method for the collection or data to complete the analysis, such as through the use of photos, aerial surveys, "as built" plans, topographic maps, soils maps, and any other relevant information.

**4VAC50-60-70. Stream channel erosion. Repeal**

**4VAC50-60-72. Design Storms and Hydrologic Methods**

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A. Unless otherwise specified, the prescribed design storms are the 1-year, 2-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

B. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in this Part. The local program may allow for the use of the Rational Method for evaluating peak discharges or the Modified Rational Method for evaluating volumetric flows to stormwater conveyances with drainage areas of 200 acres or less.

**4VAC50-60-74. Stormwater harvesting**

In accordance with § 10.1-603.4 of the Code of Virginia, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are feasible, reasonable, and consistent with federal, state and local regulatory authorities.

**4VAC50-60-76. Linear development projects**

Unless exempt pursuant to §10.1-603.8 subsection B, linear development projects shall control post-development stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with these regulations.

**4VAC50-60-80. Flooding. Repeal**

**4VAC50-60-85. Stormwater management impoundment structures or facilities**

A. Construction of stormwater management impoundment structures or facilities within tidal or nontidal wetlands and perennial streams is ~~prohibited unless allowed by the local program and all required permits are obtained~~ not recommended.

B. Construction of stormwater management impoundment structures or facilities within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain should be avoided. When this is demonstrated to be unavoidable, all stormwater management facility construction shall be in compliance with all applicable requirements under the National Flood Insurance Program, 44 CFR Parts 59 and 60 and local floodplain ordinances.

C. Stormwater management impoundment structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity and spillway design for the 100-year storm event. In no case shall the design standard be less than the 100-year storm event for any stormwater management impoundment structure. **This provision does not apply to underground stormwater management structures.**

D. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a geological study of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

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E. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 4 VAC 50-60-63 and the water quantity criteria set out in 4 VAC 50-60-66. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land disturbing activity is encouraged to screen for known existence of heritage resources in the karst features. Any Class V Underground Injection Control Well registration statements for stormwater discharges to improved sinkholes shall be included in the SWPPP.

**4VAC50-60-90. Regional (watershed-wide) stormwater management plans.** Repeal

### **4VAC50-60-93. Stormwater Management Plan Development**

A. A stormwater management plan for a land disturbing activity shall apply these stormwater management technical criteria to the entire land disturbing activity.

B. Individual lots or planned phases of developments shall not be considered separate land-disturbing activities, but rather the entire development shall be considered a single land disturbing activity.

C. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

### **4VAC50-60-96. Comprehensive watershed stormwater management plans**

A. Local programs may develop comprehensive watershed stormwater management plans to be approved by the board that meet the water quality objectives, quantity objectives, or both of this chapter. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing land disturbing site are achieved within the same HUC, or within HUCs approved by the board another locally designated watershed.

State and federal agencies intending to develop large tracts of land may develop or participate in comprehensive watershed stormwater management plans where practicable. The During the plan's implementation, the local program shall document account for nutrient reductions accredited to the BMPs specified in the plan achieved during the plan's implementation. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures which is satisfactory to the local program to prevent downstream erosion and flooding. If the land use assumptions upon which the plan was based changes or if any other amendments are deemed necessary by the local program, the local program shall provide plan amendments to the board for review and approval.

B. If the local program allows for a pro rata fee in accordance with § 15.2-2243 of the Code of Virginia, then the reductions required for a site by this chapter may be achieved by the payment of a pro rata fee sufficient to fund improvements necessary to adequately achieve those requirements in accordance with that section of the Code and this chapter.

### Documents Incorporated by Reference

Pollutant - Runoff Reduction Method contained within the Virginia Stormwater Management Handbook

Technical Bulletin # 1, Stream Channel Erosion Control

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**Part IIIA**  
**Local Programs**

**4VAC50-60-100. Applicability. Repeal**

**4VAC50-60-110. Technical criteria for local programs. Repeal**

**4VAC50-60-120. Requirements for local program and ordinance. Repeal**

**4VAC50-60-130. Administrative procedures: stormwater management plans. Repeal**

**4VAC50-60-140. Administrative procedures: exceptions. Repeal**

**4VAC50-60-150. Administrative procedures: maintenance and inspections. Repeal**

**4VAC50-60-102. Authority and Applicability.**

If a locality has adopted a local stormwater management program in accordance with the Virginia Stormwater Management Act, §10.1-603.2 et seq. and the board has deemed such program adoption consistent with the Virginia Stormwater Management Act and these regulations in accordance with §10.1-603.3 subsection F, the board may authorize a locality to administer a qualifying local program. Pursuant to §10.1-603.4, the board is required to establish standards and procedures for such an authorization.

This part specifies the minimum technical criteria and the local government ordinance requirements for a local program to be considered as a qualifying local program. Such criteria include but are not limited to administration, plan review, issuance of coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, inspection, and enforcement.

**4VAC50-60-104. Technical criteria for qualifying local programs.**

A. All qualifying local programs shall require compliance with the provisions of Part II (4VAC50-60-40 et seq.) unless an exception is granted pursuant to 4VAC50-60-122 and shall comply with the requirements of 4VAC50-60-460 subsection L.

B. When a locality operating a qualifying local program has adopted requirements more stringent than those imposed by this chapter in accordance with §10.1-603.7 or implemented a comprehensive stormwater management plan, the department shall consider such requirements in its review of state projects within that locality in accordance with Part IV of these regulations (4VAC50-60-160 et seq.).

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

**4VAC50-60-106. Qualifying local program administrative requirements.**

A. A qualifying local program shall provide for the following:

1. Identification of the authority authorizing coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities (4 VAC 50-60-1170), the plan

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reviewing authority, the plan approving authority, the inspection authority, and the enforcement authority;

2. ~~Regulations and technical~~ Technical criteria to be used in the qualifying local program;

3. Procedures for the submission and approval of plans;

4. Assessment and collection of fees, including a procedure for a partial refund of fees in accordance with 4VAC50-60-840;

5. Inspection and monitoring of land disturbing activities covered by a permit for compliance;

6. Procedures or policies for long-term inspection and maintenance of stormwater management facilities; and

7. Enforcement.

B. A locality shall adopt an ordinance(s) that incorporates the components set out in subsection A and consent to follow procedures provided by the department for the issuance, denial, revocation, termination, reissuance, transfer, or modifications of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

C. A qualifying local program shall report to the department information related to the administration and implementation of the qualifying local program in accordance with 4VAC50-60-126.

D. A qualifying local program may require the submission of a reasonable performance bond or other financial surety and for the release of such sureties in accordance with the criteria set forth in §10.1-603.8.

### **4VAC50-60-108. Qualifying local program stormwater management plan review.**

A. A qualifying local program shall require stormwater management plans to be submitted for review and approval be approved prior to commencement of land disturbing activities.

B. A qualifying local program shall approve or disapprove a stormwater management plan and required accompanying information according to the following:

1. Stormwater management plan review shall begin upon submission of a complete plan. A complete plan shall at a minimum include the following elements:

a. The location of all points of stormwater discharge, receiving surface waters or karst features into which the stormwater discharges, and pre-development and post-development conditions for drainage areas, including final drainage patterns and changes to existing contours;

b. Contact Information including the name, address, and telephone number of the property owner and the operator of the construction site and the tax reference number and parcel number of the property or properties affected;

c. A narrative that includes a description of current site conditions and proposed development and final site conditions, including description of the site, as depicted on the submitted map pursuant to subsection h, and proposed stormwater management facilities and the mechanism, including financial responsibility, through which the facilities will be operated and maintained during and after construction activity;

d. The location and the design of the proposed stormwater management facilities;

e. Information identifying the hydrologic characteristics and structural properties of soils utilized with the installation of stormwater management facilities;

f. ~~Comprehensive hydrologic~~ Hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;

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g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. A map(s) of the site which depicts the topography of the site and includes:

(i) all contributing drainage areas;

(ii) receiving surface waters or karst features into which stormwater will be discharged;

(iii) existing streams, ponds, culverts, ditches, and wetlands, and other water bodies;

(iv) soil types, geologic formations, forest cover, other vegetative areas;

(v) current land use including all existing structures, roads, and locations of known utilities, roads, and easements;

(vi) the location of the natural resource—any critical habitat for threatened or endangered species or other heritage resources identified by the department’s Division of Natural Heritage and structures at the site as they exist prior to the commencement of the project;

(vii) sufficient information on adjoining parcels to assess the impacts of stormwater from the site;

(viii) the limits of clearing and grading, and the proposed drainage patterns on the site;

(ix) proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

(x) proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads and easements.

i. Proposed right-of-entry agreements or easements from the owner for purposes of inspection and maintenance;

j. Proposed maintenance agreements, including inspection schedules, in accordance with 4VAC50-60-124. between a qualifying local program and the owner, which shall contain provisions for fiscal responsibility and inspection schedules. Such agreements may also contain provisions specifying that, where maintenance or repair of a stormwater management facility located on the owner’s property is neglected, or the stormwater management facility becomes a public health or safety concern and the owner has failed to perform the necessary maintenance and repairs after receiving notice from the locality, the qualifying local program may perform the necessary maintenance and repairs and recover the costs from the owner. In the specific case of a public health or safety danger, the written notice may be waived by the locality.

k. A complete registration statement and required fee form and fees.

l. Such other information as may be deemed necessary by the qualifying local program.

2. Elements of the stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations, and the person responsible for the land disturbing activity or their designated agent shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.

3. Completeness of a plan and required accompanying information shall be determined by the qualifying local program, and the applicant shall be notified of any determination, within 15 calendar days of receipt.

a. If within those 15 days the plan is deemed to be incomplete based on the criteria set out in subsection B of this section, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.

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b. If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.

c. If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.

d. The qualifying local program shall act within 45 days on any plan that has been previously disapproved and resubmitted.

4. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land disturbing activity or their designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the qualifying local program.

5. If a plan meeting all requirements of this chapter and of the qualifying local program is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

C. If allowed by the qualifying local program, an initial stormwater management plan may be submitted for review and approval when it is accompanied by an erosion and sediment control plan, and preliminary stormwater design for the current and future site work, and the required registration statement, fee form, and fee. Such plans shall be limited to the initial clearing and grading of the site unless otherwise allowed by the qualifying local program. ~~An~~ Approval by the qualifying local program of an initial plan does not supersede the need for the submittal and approval of a complete stormwater management plan and the updating of the SWPPP prior to the commencement of activities beyond initial clearing and grading and other activities approved by the local program. The ~~information in the~~ initial plan shall include information detailed in subsection B to the extent required by the qualifying local program and such other information as may be required by the local program.

D. Each approved plan may be modified in accordance with the following:

1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the qualifying local program. The qualifying local program shall have 60 calendar days to respond in writing either approving or disapproving such requests.

2. Based on an inspection, the qualifying local program may require amendments to the approved stormwater management plan to address the noted deficiencies and notify the person responsible for the land disturbing activity of the required modifications.

**4VAC50-60-112. Qualifying local program authorization of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.**

A. Coverage shall be authorized by the qualifying local program under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have submitted an approved initial stormwater management plan or an approved a complete stormwater management plan for the land disturbing activity. ~~Approval of an initial plan does not supersede the need for the submittal and approval of a complete stormwater management plan and the updating of the SWPPP prior to the commencement of activities beyond initial clearing and grading and other activities approved by the local program.~~



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2. The applicant must have an approved registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities.

3. The applicant must have submitted the required fee form and fee for the registration statement seeking coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities prior to initial stormwater management plan or stormwater management plan review.

4. Applicants submitting registration statements deemed to be incomplete must be notified within ~~40~~ 15 working days of receipt by the qualifying local program that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. Coverage or termination of coverage shall be authorized through a standardized database or other method provided by the department. Such database shall include, at a minimum, permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location as well as date of termination.

C. Coverage information pertaining to the VSMP General Permit for Discharges of Stormwater from Construction Activities shall be reported to the department in accordance with 4VAC50-60-126 by the qualifying local program.

D. The applicant shall be notified of authorization of permit coverage by the qualifying local program.

E. Under no circumstance shall land disturbance commence under any coverage issued prior to approval of an initial stormwater management plan or a complete stormwater management plan and the updating of the SWPPP.

### **4VAC50-60-114. Qualifying local program inspections Inspections.**

A. ~~Inspections of land disturbing activities shall be conducted by a~~ The qualifying local program or its designee shall inspect the land disturbing activity during construction ~~to ensure that the activity is in~~ for compliance with the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. The person responsible for the development project or their designated agent shall submit ~~an as-built survey to a qualifying local program~~ a construction record drawing for permanent stormwater management facilities, appropriately sealed and signed by a professional in accordance with all minimum standards and requirements pertaining to the practice of that profession pursuant to Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater management facilities have been ~~constructed~~ completed and are functioning in a manner to meet the required water quality and quantity criteria ~~in accordance with the approved plan~~. The qualifying local program shall ensure that an as-built survey is have the construction record drawing and certification on file ~~and the facilities are properly functioning~~ prior to the release of any portion of the associated performance bond or surety.

C. The operator(s) of stormwater management facilities shall be required to conduct inspections in accordance with ~~a recorded~~ an inspection schedule ~~and in a recorded maintenance agreement, or on an annual basis for stormwater management facilities without a recorded inspection schedule and maintenance agreement~~, and shall submit written inspection and maintenance reports to the qualifying local program upon request. Such reports, if consistent with a board approved inspection program established in Subsection D, may be utilized by the



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qualifying local program if the inspection is conducted by a person who is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§54.1-400 et seq.) of Chapter 4 of Title 54.1 or who holds a certificate of competence from the board. The reports, if so utilized, must be kept on file with the qualifying local program to assess the general status of the facilities and to guide the periodic development or modification of a qualifying local program's alternative inspection schedule.

D. A qualifying local program shall inspect stormwater management facilities on an annual basis or as established by establish an alternative inspection program that may allow for a less frequent inspection but ensures that the stormwater management facilities are functioning as intended. Any alternative inspection program shall be:

1. Approved by the board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that takes into consideration the purpose and type of the facility, ownership and the existence of a recorded maintenance agreement and inspection schedule, the contributing drainage area, and downstream conditions;
4. Demonstrated to be an enforceable inspection program that meets the intent of the regulations and ensures that each stormwater management facility is inspected by the qualifying local program or its designee, not to include the owner, at least every five years; and
5. Documented by inspection records.

E. Inspection reports shall be generated and kept on file in accordance with 4VAC50-60-126 for all stormwater management facilities inspected by the qualifying local program.

F. The operator shall allow a right of entry to a representative of the qualifying local program to conduct inspections of the project.

### **4VAC50-60-116. Qualifying local program enforcement.**

A. A qualifying local program may incorporate the following components:

1. Informal and formal administrative enforcement procedures including:
  - a. Verbal warning and inspection reports;
  - b. Notices of corrective action;
  - c. Consent special orders and civil charges in accordance with §§10.1-603.2:1 subsection 7 and 10.1-603.14 subsection D2;
  - d. Notices to comply in accordance with §10.1-603.11;
  - e. Special orders in accordance with §10.1-603.2:1 subsection 7;
  - f. Emergency special orders in accordance with §10.1-603.2:1 subsection 7; and
  - g. Public notices and comment periods pursuant to 4VAC50-60-660.
2. Civil and criminal judicial enforcement procedures including:
  - a. Schedule of civil penalties set out in subsection D;
  - b. Criminal penalties in accordance with §10.1-603.14 subsections B and C; and
  - c. Injunctions in accordance with §§10.1-603.12:4 and 10.1-603.14 subsection D1.

B. A qualifying local program shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations and the local ordinance.

C. A qualifying local program may utilize the department's Stormwater Management Enforcement Manual as guidance in establishing policies and procedures.

D. A court may utilize as guidance the following Schedule of Civil Penalties set by the board in accordance with §10.1-603.14 subsection A. The range contained within the schedule

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1440 reflects the degree of harm caused by the violation, which is site-specific and may vary greatly  
 1441 from case to case, as may the economic benefit of noncompliance to the violator. Each day of  
 1442 violation of each requirement shall constitute a separate offense. When other enforcement  
 1443 remedies have been unsuccessful, in egregious situations, or for repeat offenders, the court has  
 1444 the discretion to impose a maximum penalty of \$32,500 per violation per day in accordance with  
 1445 §10.1-603.14 subsection A. The board intends that these civil penalties generally be applied  
 1446 after other enforcement remedies have been unsuccessful, in egregious situations, or for repeat  
 1447 offenders.  
 1448

<u>Violations and Frequency of Occurrence *</u>	<u>Maximum \$/occurrence (occur.)/day</u>	<u>Recommended Minimum \$/occurrence/day</u>
<u>No Permit Registration</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No Stormwater Pollution Prevention Plan (SWPPP)</u> <u>[No SWPPP components including</u> <u>erosion and sediment (E&amp;S Control Plan)]</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No approved E&amp;S Control Plan</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>Failure to install stormwater Best</u> <u>Management Practices (BMPs) or E&amp;S</u> <u>controls**</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$5,000/ occur./ day(s)</u>
<u>Failure to conduct required inspections</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$1,000/ occur./ day(s)</u>
<u>Operational deficiencies (e.g., failure to</u> <u>initiate stabilization measures as soon as</u> <u>practicable; failure to implement control</u> <u>measures for construction debris;</u> <u>incomplete SWPPP; SWPPP not onsite;</u> <u>Stormwater BMPs or erosion and</u> <u>sediment controls improperly installed or</u> <u>maintained; incomplete, improper or</u> <u>missed inspections.)</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$500/ occur./ day(s)</u>

1449 \* The frequency of occurrence is a maximum of per day per violation.

1450 \*\* Each BMP and E&S control not installed constitutes a separate violation

1451

<u>1. Gravity-based Component</u>	<u>Marginal</u>	<u>Moderate</u>	<u>Serious</u>	
<u>Violations* and Frequency</u> <u>of Occurrence **</u>	<u>\$\$ x</u> <u>occurrences</u>	<u>\$\$ x</u> <u>occurrences</u>	<u>\$\$ x occurrences</u>	<u>SUBTOTAL</u>
<u>No Permit Registration (each</u> <u>month w/o coverage = 1</u> <u>occurrence)</u>	<u>500 x</u>	<u>1,000 x</u>	<u>2,000 x</u>	

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No SWPPP (No SWPPP components including E&S Plan) (each month of land-disturbing w/o SWPPP = 1 occurrence)	1,000 x	1,500 x	2,000 x	
Incomplete SWPPP	300 x	500 x	1,000 x	
SWPPP not on site	100 x	300 x	500 x	
No approved Erosion and Sediment Control Plan	500 x	1,000 x	2,000 x	
Failure to install stormwater BMPs or erosion and sediment ("E&S") controls	300 x	500 x	1,000 x	
Stormwater BMPs or E&S controls improperly installed or maintained	250 x	500 x	750 x	
Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; unauthorized discharges of stormwater; failure to implement control measures for construction debris)	1,000 x	2,000 x	5,000 x	
Failure to conduct required inspections	500 x	2,000 x	3,000 x	
Incomplete, improper or missed inspections (e.g., inspections not conducted by qualified personnel; site inspection reports do not include date, weather information, location of discharge, or are not certified, etc.)			300 x	500 x
			Subtotal #1	
2. Estimated Economic Benefit of Noncompliance (if applicable)			Subtotal #2	
3. Recommended civil penalty			Total (#1 and #2)	
* Each stormwater BMP or E&S control that is either not installed or improperly installed or maintained is a separate violation.				
** The frequency of occurrence is per event unless otherwise noted.				

E. Pursuant to § 10.1-603.2:1 subsection 2, authorization to administer a qualifying local program shall not remove from the board the authority to enforce the provisions of the Virginia Stormwater Management Act and attendant regulations.

F. All amounts recovered by a qualifying local program shall be used solely to carry out the qualifying local program's responsibilities pursuant to Part II and this part of these regulations paid into the treasury of the locality in which the violation occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters

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of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

**4VAC50-60-118. Hearings.**

A qualifying local program shall ensure that any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6 and shall ensure that all hearings held under this chapter shall be conducted in accordance with § 10.1-603.12:7 or as otherwise provided by law.

**4VAC50-60-122. Qualifying local program: exceptions.**

~~A. A person may request an~~ An exception to the provisions of Part II (4VAC50-60-40 et seq.) may be requested. A qualifying local program may grant exceptions through an administrative process. A request for an exception, including the reasons for making the request, shall be submitted, in writing, to the qualifying local program. An exception may be granted, provided that: (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the qualifying local program grant an exception to the requirement that the land disturbing activity obtain a permit.

D. A record of all exceptions granted shall be maintained by the qualifying local program and reported to the department in accordance with 4VAC50-60-126.

**4VAC50-60-124. Qualifying local program: Stormwater Management Facility maintenance.**

A. Responsibility for the operation and maintenance of stormwater management facilities in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner or other legally established entity and shall pass to any successor. The government entity implementing the qualifying local program shall be a party to each maintenance agreement pursuant to 4VAC50-60-108 subsection j. Such maintenance agreement shall include an inspection schedule, and shall ensure that the designed flow and drainage patterns to a permanent facility are maintained. ~~If portions of the land are to be transferred or conveyed, legally binding arrangements shall be made to pass maintenance responsibilities to successors in title. These arrangements shall designate for each stormwater management facility the property owner, governmental agency, or other legally established entity that will be permanently responsible for maintenance. These arrangements shall also preserve the rights of the qualifying local program pursuant to an agreement with the owner formed under 4VAC50-60-108 subsection j.~~ Such agreements may also contain provisions specifying that, where maintenance or repair of a stormwater management facility located on the owner's property is neglected, or the stormwater management facility becomes a public health or safety concern and the owner has failed to perform the necessary maintenance and repairs after receiving notice from the locality, the qualifying local program may perform the necessary maintenance and

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repairs and recover the costs from the owner. In the specific case of a public health or safety danger, the written notice may be waived by the locality.

B. In the case of developments where lots are to be transferred or conveyed, the qualifying local program shall be notified of any transfer or conveyance permanent arrangements between the seller and the buyer, which are legally binding and satisfactory to the qualifying local program, shall be made to ensure continued performance in accordance with this chapter.

C. Where maintenance or repair is neglected, or the stormwater management facility becomes a public health or safety concern, the qualifying local program may take action pursuant to an agreement with the owner pursuant to 4VAC50-60-108 subsection j.

D. C. The qualifying local program shall require right-of-entry agreements or easements from the operator property owner for purposes of inspection and maintenance.

E. The qualifying local program shall ensure that the flow and drainage patterns associated with a permanent facility are maintained to the extent allowed by law.

**4VAC50-60-126. Qualifying local program: reporting and record keeping.**

A. On a fiscal year basis (July 1 to June 30), a qualifying local program shall report to the department by October 1st of each year in a format provided by the department. The information to be provided shall include but not be limited to the following:

1. Information on each permanent stormwater management facility accepted-completed during the fiscal year to include type of stormwater management facility, GPS coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;

2. Number of VSMP General Permit for Discharges of Stormwater from Construction Activities projects inspected and the total number of inspections by acreage categories determined by the department during the fiscal year;

3. Number and type of enforcement actions during the fiscal year; and

4. Number of exceptions applied for and the number granted or denied during the fiscal year.

B. A qualifying local program shall make information set out in subsection A available to the department upon request.

C. A qualifying local program shall keep records in accordance with the following:

1. Permit files shall be kept for 5 3 years after permit termination. After 5 3 years, the registration statements, notices of coverage and notices of termination shall be delivered to the department archived in accordance with the regulations of the Library of Virginia.

2. Stormwater maintenance facility inspection reports shall be kept for 5 years from the date of creation inspection. After 5 years, the reports shall be archived in accordance with the regulations of the Library of Virginia.

3. Stormwater maintenance agreements, design standards and specifications, post-construction surveys, and maintenance records shall be maintained in perpetuity.

4. Other records shall be maintained in accordance with the regulations of the Library of Virginia.

**Part IIIB**

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**Department of Conservation and Recreation administered local programs**

**4VAC50-60-128. Authority and Applicability.**

In the absence of a qualifying local program, the department, in accordance with an adoption and implementation schedule set by the board and upon board approval, shall administer the local stormwater management program in a locality in accordance with §10.1-603.3 subsection C. This part specifies the minimum technical criteria for a department - administered local stormwater management program in accordance with the Virginia Stormwater Management Act, §10.1-603.2 et seq., and the standards and criteria established in these regulations by the board pursuant to its authority under that article. Such criteria include but are not limited to administration, plan review, issuance of coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, issuance of individual permits, inspection, enforcement, and education and outreach components.

**4VAC50-60-132. Technical criteria.**

A. The department-administered local stormwater management programs shall require compliance with the provisions of Part II (4VAC50-60-40 et seq.) unless an exception is granted pursuant to 4VAC50-60-142 subsection D and shall comply with the requirements of 4VAC50-60-460 subsection L.

B. When reviewing a federal project, the department shall apply the provisions of this chapter.

C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies to impose stricter technical criteria or other requirements as allowed by law.

**4VAC50-60-134. Administrative ~~authorities~~ requirements.**

A. The department is the permit issuing authority, plan approving authority, and the enforcement authority.

B. The department or its designee is the plan reviewing authority and the inspection authority.

C. The department shall assess and collect fees.

D. The department may require the submission of a reasonable performance bond or other financial surety in accordance with the criteria set forth in §10.1-603.8 prior to the issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities and in accordance with the following:

1. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management BMPs approved under the stormwater management plan, plus 25%;

2. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required in accordance with the approved stormwater management plan;

3. Upon failure by the applicant to take such action as required, the department may act and may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held; and

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4. Within sixty days of the completion of the requirements and conditions of the VSMP General Permit for Discharges of Stormwater from Construction Activities and the department's acceptance of the Notice of Termination, such bond, cash escrow, letter of credit or other legal arrangement shall be refunded to the applicant.

**4VAC50-60-136. Stormwater management plan review.**

A. The department shall require stormwater management plans for review and **approval** **be approved** prior to commencement of land disturbing activities.

B. The department shall approve or disapprove a stormwater management plan and required accompanying information according to the criteria set out for a qualifying local program in 4VAC50-60-108 subsection B.

C. The department shall not accept initial stormwater management plans.

D. Each approved stormwater management plan may be modified in accordance with the criteria set out for a qualifying local program in 4VAC50-60-108 subsection D.

**4VAC50-60-138. Issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.**

The department shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have a department approved stormwater management plan for the land disturbing activity.

2. The applicant must have submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with Part VII (4VAC50-60-360 et seq.) and the requirements of the VSMP General Permit for Discharges of Stormwater from Construction Activities, which acknowledges that a SWPPP has been developed and will be implemented, and the registration statement must have been reviewed and approved **prior to the commencement of land disturbance.**

3. The applicant must have submitted the required fee form and fee for the registration statement seeking coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

4. Applicants submitting registration statements deemed to be incomplete must be notified within **40 15** working days of receipt by the department that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

**5. The applicant shall be notified of authorization of permit coverage by the department.**

**56.** Individual permits for qualifying land disturbing activities may be issued at the discretion of the board or its designee pursuant to 4VAC50-60-410 subsection B3.

**4VAC50-60-142. Inspections, Enforcement, Hearings, Exceptions, and Stormwater Management Facility Maintenance.**

A. Inspections shall be conducted by the department in accordance with 4VAC50-60-114.

B. Enforcement actions shall be conducted by the department in accordance with 4VAC50-60-116. The department's Stormwater Management Enforcement Manual shall serve as guidance to be utilized in enforcement actions under the Stormwater Management Act and

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attendant regulations. Any amounts assessed by a court as a result of a summons issued by the board or the department shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to §10.1-603.4:1.

C. Hearings shall be conducted by the department in accordance with 4VAC50-60-118.

D. Exceptions may be granted by the department in accordance with 4VAC50-60-122.

E. Stormwater management facility maintenance shall be conducted in accordance with 4VAC50-60-124.

**4VAC50-60-154. Reporting and record keeping.**

A. The department shall maintain a current database of permit coverage information for all projects that includes permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location.

B. On a fiscal year basis (July 1 to June 30), a local program shall report to the department by October 1<sup>st</sup> in accordance with 4VAC50-60-126 subsection A.

C. On a fiscal year basis (July 1 to June 30), the department shall compile information provided by local programs.

D. Records shall be maintained by the department in accordance with 4VAC50-60-126 subsection C.

**Part IIIC**

**Department of Conservation and Recreation procedures for review of qualifying local programs**

**4VAC50-60-156. Authority and Applicability.**

This part specifies the criteria that the department will utilize in reviewing a locality's administration of a qualifying local program pursuant to §10.1-603.12 following the board's approval of such program in accordance with the Virginia Stormwater Management Act and these regulations.

**4VAC50-60-157. Stormwater Management Program Review.**

A. The department shall review each board-approved qualifying local program once every five years on a review schedule approved by the board. The department may review a qualifying local program on a more frequent basis if deemed necessary by the board and shall notify the local government if such review is scheduled.

B. The review of a board-approved qualifying local program shall consist of the following:

1. A personal interview between department staff and the qualifying local program administrator or his designee;

2. A review of the local ordinance(s) and other applicable documents;

3. A review of a subset of the plans approved by the qualifying local program and consistency of application including exceptions granted;

4. An accounting of the receipt and of the expenditure of fees received and of the financing of the program;

5. An inspection of regulated activities; and



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6. A review of enforcement actions and an accounting of amounts recovered through enforcement actions.

C. To the extent practicable, the department will coordinate the reviews with other local government program reviews to avoid redundancy.

D. The department shall provide its recommendations to the board within 90 days of the completion of a review. Such recommendations shall be provided to the locality in advance of the meeting.

E. The board shall determine if the qualifying local program and ordinance are consistent with the Act and state stormwater management regulations and notify the qualifying local program of its findings.

F. If the board determines that the deficiencies noted in the review will cause the qualifying local program to be inconsistent out of compliance with the Stormwater Management Act and its attendant regulations, the board shall notify the qualifying local program concerning the deficiencies and provide a reasonable period of time for corrective action to be taken. If the qualifying local program agrees to the corrective action recommended by the board, the qualifying local program will be considered to be conditionally compliant with the Stormwater Management Act and its attendant regulations. If the qualifying local program fails to take the corrective action within the specified time, the board may take action pursuant to §10.1-603.12 of the Code of Virginia.

### **Part IIID**

### **Virginia Soil and Water Conservation Board authorization procedures for qualifying local programs**

#### **4VAC50-60-158. Authority and Applicability.**

Section 10.1-603.4 subsection 1 requires that the board establish standards and procedures for authorizing a locality to administer a stormwater management program. In accordance with that requirement, and with the further authority conferred upon the board by the Virginia Stormwater Management Act, §10.1-603.2 et seq., this part specifies the procedures the board will utilize in authorizing a locality to administer a qualifying local program.

#### **4VAC50-60-159. Authorization Procedures for Qualifying Local Programs.**

A. A locality required to adopt a program in accordance with §10.1-603.3 subsection A or those electing to seek authorization to administer a qualifying local program must submit to the board an application package which, at a minimum, contains the following:

1. The local program ordinance(s);
2. A funding and staffing plan based on the projected permitting fees;
3. The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection and enforcement components of the program; and
4. The process by which the locality will collect permit fees and submit for deposit on a monthly basis to the Virginia Stormwater Management Fund.

B. Any A locality required to adopt a qualifying local program or a locality seeking authorization to administer a qualifying local program pursuant to this chapter must be administering an erosion and sediment control program that has been found by the board to be

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consistent or conditionally consistent with the Erosion and Sediment Control Law, § 10.1-560 et seq. The department at the direction of the board shall administer a board approved stormwater management program for a locality that is not operating a consistent or conditionally consistent erosion and sediment control program.

C. Upon receipt of an application package, the board or its designee shall have 20 calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the board or its designee must identify in writing the reasons the application package is deemed deficient.

D. Upon receipt of a complete application package, the board or its designee shall have 90 calendar days for the review of the application package. During the 90-day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the locality in writing. If the application is not approved, the reasons for not approving the application shall be provided to the locality in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and these regulations.

E. A locality required to adopt a qualifying local program in accordance with §10.1-603.3 subsection A shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § 10.1-603.3 and shall adopt a qualifying local program consistent with the Act and this chapter within the timeframe established pursuant to § 10.1-603.3.

F. A locality not required to adopt a qualifying local program in accordance with §10.1-603.3 subsection A but electing to adopt a qualifying local program shall notify the board in accordance with the following:

1. A locality electing to adopt a qualifying local program may notify the board of its intention within six months of the effective date of these regulations. Such locality shall submit a complete application package for the board's review pursuant to a schedule set by the board and shall adopt a qualifying local program within the timeframe established by the board.

2. A locality electing to adopt a qualifying local program that does not notify the board within the initial six-month period of its intention may thereafter notify the board at any regular meeting of the board. Such notification shall include a proposed schedule for adoption of a qualifying local program within a timeframe agreed upon by the board.

G. The department shall administer the responsibilities of the Act and this chapter in any locality in which a qualifying local program has not been adopted. The department shall develop a schedule, to be approved by the board, for adoption and implementation of the requirements of this chapter in such localities. Such schedule may include phases of implementation and shall be based upon considerations including the typical number of permitted projects located within a locality, total number of acres disturbed by such permitted projects, and such other considerations as may be deemed necessary by the board.

## FORMS

Application Form 1-General Information, Consolidated Permits Program, EPA Form 3510-1 (June 1980) (DCR 199-149).

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- 1773 Department of Conservation and Recreation Permit Application Fee Form, (DCR 199-145)  
1774 (09/04).  
1775 VSMP General Permit Registration Statement for Construction Activity Stormwater Discharges,  
1776 (DCR01), (DCR 199-146) (09/04).  
1777 VSMP General Permit Notice of Termination for Construction Activity Stormwater Discharges,  
1778 (DCR01), (DCR 199-147) (09/04).  
1779 VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal  
1780 Separate Storm Sewer Systems (DCR02), (DCR 199-148) (09/04).  
1781 ~~Low Impact Development Water Quality Crediting Spreadsheets (DCR 199-182).~~  
1782